IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

WP(C).No. 4545 of 2007(N)

PETITIONER:

T.C. SASIKUMAR,
SENIOR SUPERINTENDENT, STATE WATER TRANSPORT DEPARTMENT, REGIONAL OFFICE, CHANGANACHERRY.

BY ADV. SRI.M.V.BOSE,
ADV. SRI.VINOD MADHAVAN,
ADV. SMT.NISHA BOSE.

RESPONDENTS:
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1. **THE STATE OF KERALA,**
   REPRESENTED BY THE SECRETARY TO GOVERNMENT,
   GOVERNMENT (D) DEPARTMENT,GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **THE DIRECTOR,**
   DIRECTORATE OF STATE WATER TRANSPORT DEPARTMENT,
   ALAPPUZHA.

***ADDL.R3. SHAJI.V. NAIR, FINANCE MANAGER,**
PLANTATION CORPORATION OF KERALA LTD.,
KOTTAYAM.

***IS IMPLEADED AS ADDL. R3. AS PER THE ORDER DATED 31/07/07 IN I.A. NO. 10535/2007.**

BY GOVERNMENT PLEADER SRI. NANDAKUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.4545/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE SPECIAL RULES DTD. 25/06/1977.

EXT.P.2: COPY OF THE ORDER DTD. 06/03/2000 OF THE R.2.

EXT.P.3: COPY OF THE REPRESENTATION DTD. 07/12/2005 FROM THE PETITIONER BEFORE THE R.1.

EXT.P.4: COPY OF THE LETTER DTD. 24/12/2005 FROM THE R.2. TO R.1.

EXT.P.5: COPY OF THE JUDGMENT IN W.P.(C). NO. 3255/2006 DTD. 07/03/2006.

EXT.P.6: COPY OF THE ORDER DTD. 30/08/2006 PASSED IN CONTEMPT CASE NO. 953/06.

EXT.P.7: COPY OF THE GOVERNMENT ORDER G.O. (RT). NO. 316/2006/TRAN. DTD. 30/09/2006.

EXT.P.8: COPY OF THE INTERIM DIRECTION DTD. 31/10/2006 IN W.P.(C). 26745/2006.

EXT.P.9: COPY OF THE ORDER IN W.P.(C). NO. 26745/06 DTD. 28/11/2006.

EXT.P.10: COPY OF THE LETTER DTD 12/12/2006 FROM SECRETARY TO GOVT. TO THE DIRECTOR, STATE WATER TRANSPORT DEPARTMENT.

EXT.P.11: COPY OF THE GOVERNMENT LETTER TO DIRECTOR, STATE WATER TRANSPORT DEPARTMENT DTD. 18/09/2006.

EXT.P.12: COPY OF THE CIRCULAR DTD. 17/01/2007 ISSUED BY THE PRINCIPAL SECRETARY TO GOVERNMENT.

EXT.P.13: COPY OF THE G.O. (RT). NO. 265/2007/TRANS. DTD 28/07/2007.

EXT.P.14: COPY OF THE CLIPPINGS SIGNED ON 19/05/2007 BY THE PRINCIPAL SECRETARY.

EXT.P.15: COPY OF THE NEWS ITEM APPEARED IN MALAYALA MANORAMA DAILY DTD. 31/07/2007.

W.P.(C). NO.4545/2007:

RESPONDENT'S EXHIBITS:

EXT.R1.A: COPY OF THE PRESS RELEASE DT. 17/01/07.

EXT.R1.B: COPY OF THE PAPER PUBLICATION.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR, J.

W.P.(C).No.4545 of 2007-N

Dated this the 4th day of June, 2007.

J U D G M E N T

The petitioner is a senior Superintendent in the Water Transport Department. The post of Director in that department is vacant. The method of appointment to the said post is by promotion of qualified persons in the service or by transfer from any other services. The service consists of three posts, namely, Director, Personal Assistant to the Director and Works Manager. The petitioner, not being a member of service is not eligible to be promoted as Director. But, the Government have issued Circulars inviting applications from candidates for appointment by transfer and also by deputation. The petitioner is one of the applicants for appointment by transfer. So, he attacks Ext.P12 Circular dated 17-1-2007 by which the post is sought to be filled up by deputation. According to the petitioner, the same is illegal since as per the rules, the post is to be filled up either by promotion or by transfer.

2. The first respondent has filed a counter affidavit supporting the impugned Circular, Ext.P12. According to the respondents, the Government can fill up the post either by transfer or by deputation.

Deputation is also one of the methods to fill up the post. Therefore, there is nothing illegal with Ext.P12.

3. Normally, every post has been filled up in accordance with the rules. Of course, in exigencies of service or for other valid reasons, it can be filled up otherwise than in accordance with the rules also. But, in this case when the method to fill up the post by transfer is available, it is unnecessary for the Government to go for other methods. So, it is ordered that, if there is eligible or suitable candidates available for appointment by transfer, the Government shall follow the said method which is permissible as per the Special Rules. Only in the absence of eligible or suitable candidates for appointment by transfer, the post shall be filled up by deputation as notified in Ext.P12.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR,
JUDGE.

MS